

## Article

# Public Procurement in the Context of Broad-Based Black Economic Empowerment (BBBEE) in South Africa—Lessons Learned for Sustainable Public Procurement

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**Abstract:** Public procurement is a key instrument in the post-apartheid South African government's broad-based black economic empowerment (BBBEE), a legislative and policy framework aimed at reversing the country's legacy of injustice and inequality through pursuing a range of socio-economic objectives that favour the majority black population. This paper employs a theoretical and derived logic model to analyse the design and implementation of BBBEE by means of literature and document review as well as key stakeholder interviews. It seeks to answer two key research questions: (1) has BBBEE achieved its intended outcomes? and (2) what lessons can be drawn from the South African experience for sustainable public procurement? The study finds a significant knowledge gap that precludes definitive conclusions on the impact of BBBEE, largely due to the limited rigorous evidence, particularly evaluations, on whether BBBEE is achieving the desired outcomes. Instead, the paper's key contribution is the development of a derived logic model that clearly outlines how BBBEE is intended to work and is used to provide insight into how BBBEE has performed against aspects of its intended outcomes. The paper finds that the intervention's effectiveness has largely been undermined by various challenges and demonstrates that it remains unclear whether BBBEE's observed achievements have translated into targeted impact of meaningful participation of all black people in the economy. Considering the scale of BBBEE and its implementation for over 16 years, the paper concludes that the limited evidence on how it is performing against its key objectives is both a design and implementation shortcoming.

**Keywords:** public procurement; black economic empowerment; sustainability; sustainable public procurement; equality; redress; policy implementation; social justice; economic transformation

## 1. Introduction

Government's role in leveraging its purchasing power to produce positive social and environmental outcomes has increasingly been a topic of interest in global sustainable development debates. This approach, known as Sustainable Public Procurement (SPP), is distinct from the traditional procurement process which prioritises financial considerations [1]. SPP is commonly defined as "a process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits not only to the organisation but also to society and the economy whilst minimising the damage to the environment" [2]. McCrudden (2004) notes that SPP combines two functions: (1) government participating in the market

as a purchaser and (2) government taking on the role of regulating the use of its purchasing power to advance social and environmental justice while taking into account the economic implications of the process [3].

SPP in Sub-Saharan Africa is still in its infancy in most countries, with few local policies in place that link it to broader sustainable development goals [2]. However, the social dimension of SPP, in particular, has received considerable attention in several Sub-Saharan African countries [4]. South Africa provides a prime example of a formal and comprehensive system of using procurement for social policy purposes. The country's apartheid system resulted in discrimination of African, Coloured, and Indian people (collectively referred to as 'black' people in South Africa) in every aspect of society, particularly political and economic life [5]. The system prevented these groups, which together constitute the majority of the population, from obtaining access to goods and services, access to fair opportunities for business ownership, management, and senior position jobs. These opportunities were all reserved for the minority white population. South Africa's first democratic government therefore had a clear, constitutionally derived, mandate to redress the inequalities of the past in the political, social, and economic sphere. The government expressed its intentions to use public procurement as an instrument to achieve specific socio-economic objectives in the 1997 Green Paper on Public Sector Procurement Reform. This has ultimately resulted in the design and implementation of the Broad-Based Black Economic Empowerment (BBBEE) initially referred to as Black Economic Empowerment (BEE). Despite these efforts to redress the injustices of the past, South Africa remains one of the world's most unequal countries with a Gini coefficient of 0.63 [6]. The Gini coefficient measures income inequality and ranges from 0 to 1. A coefficient of 0 represents perfect income equality and a coefficient of 1 represents perfect inequality. Moreover, Statistics SA reported that 49.2% of the country's adult population lives in poverty and the majority of the poor continue to be black people (approximately three out of every five black Africans are poor) [7,8].

This study conducts a desktop review of BBBEE in South Africa, supplemented by a limited number of stakeholder interviews, to understand the extent to which it has achieved its objective to promote economic transformation by enabling meaningful participation of black people in the economy. This is a question about impact, the measurement of which requires a credible estimation of the counterfactual (i.e., what would have happened if BBBEE was not implemented and comparing this to the prevailing effects?). This is typically achieved through conducting summative evaluations that are designed to draw this causal link and attribute observed changes in outcomes to the intervention. Such evaluations have not been conducted for BBBEE. Hence, this study cannot draw any conclusive remarks on whether, overall, BBBEE has achieved its underlying objective to promote economic transformation in South Africa. Instead, the paper's contribution to the literature is the development of a derived logic model for BBBEE that summarises its design and implementation logic. Additionally, it provides insight into how BBBEE has performed against aspects of its intended design and implementation objectives.

## 2. Methodology

The study employs an in-depth qualitative desktop study of South Africa's experience with the design and implementation of BBBEE, which comprises two main components: (1) literature and document review; and (2) in-depth key informant interviews. In terms of the latter, due to resource and time limitations, only eight interviews were conducted with relevant stakeholders (see Table A1 in Appendix A for list of interviewees). The paper adopts a perception-based qualitative design which allows for in-depth exploration of institutions' experiences with the implementation of BBBEE [9]. Furthermore, a theoretical and analytical framework is developed upfront, based on literature to guide the design of interview instruments and the review of literature. The two methodological components of the study are discussed in detail further below.

### 2.1. Literature and Document Review

The study conducted a comprehensive review of existing literature and an analysis of available secondary data to provide an overview of the underlying principles and objectives of BBBEE, its design and implementation, and how these have evolved over time. Additionally, the study reviews evidence of the effect of BBBEE on the promotion of economic transformation in South Africa. Emphasis is placed on studies that investigate the role BBBEE has played in reducing barriers to economic participation for targeted groups. The literature and document review were focused and targeted to the goals of the study to ensure efficiency. A key finding from the review of literature is the lack of implementation and impact evaluations that have been conducted on BBBEE to determine whether it has been designed and implemented effectively, as well as the degree to which it is meeting its intended objectives. The studies that form part of the review have rather focused on specific elements of BBBEE and are thus too narrow in focus to draw conclusions for BBBEE. Moreover, the methodological approaches that are utilised preclude conclusions that the effects described were directly caused by BBBEE.

### 2.2. Key Informant Interviews

The desktop research was complemented by in-depth interviews with key stakeholders in the ecosystem (inclusive of various public sector, civil society, and the private sector or industry stakeholders) of BBBEE's design and implementation (see Table A1 in Appendix A for list of interviewees). All interviews were semi-structured and guided by instruments whose design were informed by a theoretical framework (presented below) and findings from the document review. This approach offered the interviewer the flexibility to probe for further information, clarify issues and seek explanations to facilitate the in-depth discussion. Interviews were conducted and targeted at public sector officials, civil society, and the private sector. Due to challenges in scheduling and securing interviews, the paper is informed by eight of the ten interviews that were initially planned.

The eight respondents interviewed are reported anonymously in the paper using a code of Interviewee 1 to Interviewee 8. This order does not correspond to the sequence of interviewees listed in Appendix A.

### 2.3. Limitations of the Methodology

Due to limited evidence, the study develops informed hypotheses on BBBEE's contribution rather than providing evidence for causal impact. Rigorous evidence which is typically derived from large-scale evaluations is required in order to respond to whether BBBEE has achieved its intended impact. Instead of evaluations of BBBEE in its entirety, most of the literature comprises of qualitative and quantitative research and reviews on particular elements of BBBEE, often with a focus on a specific sector or industry. Hence, the study is limited to insights from such literature and offers insight into the achievements and challenges that have shaped BBBEE intended objective to meaningfully transform the economy. Consequently, the paper's findings serve as a useful basis for the design of large-scale evaluations.

Furthermore, the qualitative nature of the methodology presents several limitations. Firstly, due to the sample size of the key stakeholder interviews selected for the data collection phase, the study does not present a representative sample of all sectors implementing BBBEE [10]. Secondly, the methodology utilises self-reported data through the interviews. Therefore, the perception approach adopted by the study is limited by potential sources of bias including selective memory, attribution, and exaggeration [11]. However, the research team sought to mitigate this risk by using secondary data to corroborate the data collected and findings emerging from the literature reviewed.

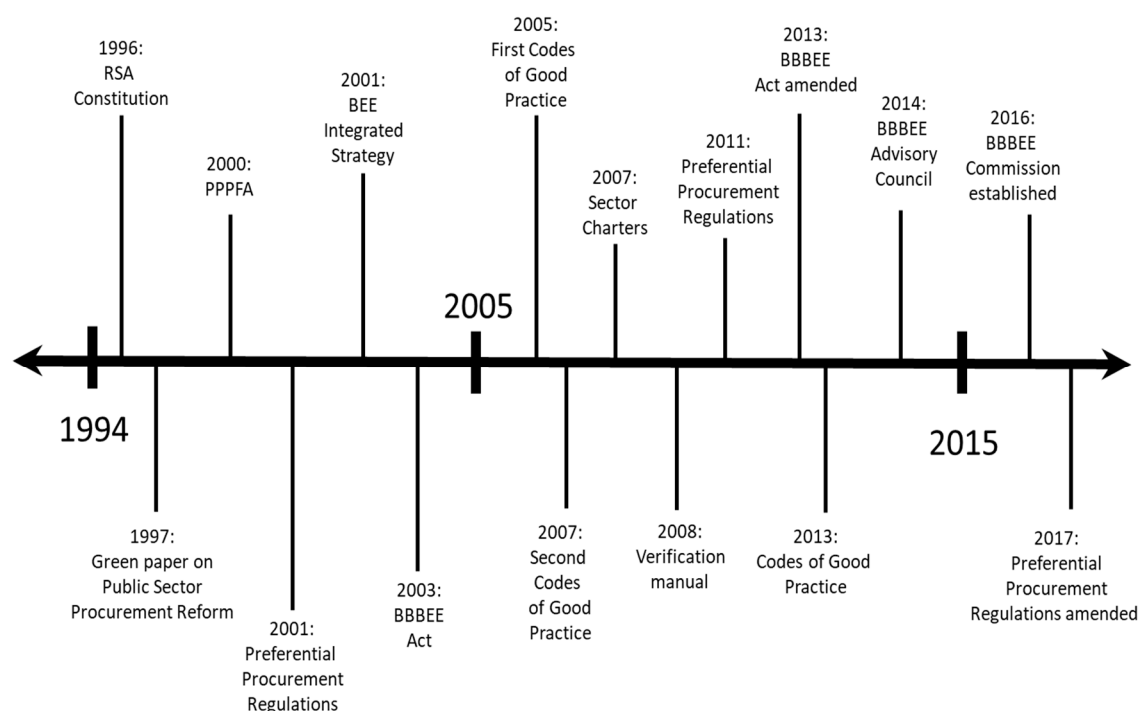
## 3. Overview and Historical Evolution of BBBEE

BBBEE seeks to promote economic transformation in order to enable meaningful participation of black people in the economy [12]. The Act defines black people as all previously disadvantaged

groups of people—namely Africans, Coloured, and Indians. It is imperative to note that although other categories of people—e.g. youth, women, people living with disabilities, and people living in rural areas—are specifically targeted, the legislation requires these beneficiaries to be black as per the BBBEE's Act's definition [13]. In addition to this overarching objective, BBBEE in its current design seeks to:

- Achieve a substantial change in the racial composition of ownership and management structures in the skilled occupations of existing and new enterprises;
- Increase the extent to which communities, workers, cooperatives, and other collective enterprises own and manage existing and new enterprises and increase their access to economic activities, infrastructure, and skills training;
- Increase the extent to which black women own and manage existing and new enterprises, and increase access to economic activities, infrastructure, and skills training;
- Promoting investment programmes that lead to broad-based and meaningful participation in the economy by black people in order to achieve sustainable development and general prosperity;
- Empowering rural and local communities by enabling access to economic activities, land, infrastructure, ownership, and skills; and
- Promoting access to finance for black economic empowerment.

BBBEE is understood as a legislative framework to guide and implement a set of principles and actions to achieve the policy intent to promote economic transformation. Its objectives have emerged from several years of revisions and refinement of various aspects of the legislative framework (see Figure 1). What follows below is an overview of this historical evolution to highlight major shifts which have occurred since the onset of democracy.



**Figure 1.** Timeline of BBBEE's evolution.

The Constitution of South Africa was published in 1996 and serves as the primary impetus for legislation and policies governing black economic empowerment in the country. The Constitution firstly creates provisions for equality and protection against disadvantage due to unfair discrimination and directly governs procurement by calling for procurement that is “... in accordance with a system

which is fair, equitable, transparent, competitive and cost-effective” in Section 2.1.7 [14]. A Green Paper on public procurement reform was published in 1997 and additionally creates provision for “affirmative action to address the deliberate marginalisation from economic, political and social power of black people, women and rural communities and to empower communities and individuals from previously disadvantaged sectors of society” [15].

The Preferential Procurement Policy Framework Act 5 of 2000 (PPPFA), under the custodianship of the National Treasury, was the first legislative response to the constitutional mandate for a procurement intervention. The Act obligated each organ of the state to determine its preferential procurement point system [16]. The Preferential Procurement Regulations promulgated in 2001 implemented the PPPFA and outlined the point system and criteria that apply when preference is allocated in the process of evaluating public tenders. It introduced the 80/20- and 90/10-point system under which, depending on the value of the contract, 80 or 90 points are allocated to a bidders’ price and 20 or 10 points to preference, which captures the bidders’ contribution to black economic empowerment [5]. The tender with the highest number of points must generally be selected. In the same year, the BBBEE integrated strategy was released as a precursor to the BBBEE Act. This was followed by the BBBEE Act 53 of 2003 [17] under custodianship of the Department of Trade and Industry (DTI).

The first Codes of Good Practice under the BBBEE Act were released in 2005 and issued with the purpose of advising and assisting both the public and private sectors in implementing the objectives of the BBBEE Act [18]. They introduced a scorecard with seven sub-elements of BBBEE namely: (1) ownership, (2) management control, (3) employment equity, (4) skills development, (5) preferential procurement, (6) enterprise development, and (7) residual element initiatives which would be used to measure an entity’s level of compliance with BBBEE. This is referred to as the firm’s BBBEE status level. There are 8 levels with level 1 indicating high performance across the elements and level 8 indicating poor performance. Detailed explanations on each of the elements are provided in Appendix A. The codes introduced seven key elements that served as the pillars to BBBEE, these elements provide a common base for measuring the impact of policy objectives of BBBEE across different entities and sectors of the economy [18]. This was followed by the second rendition of the codes two years later in 2007 which saw greater prioritisation of skills development, employment equity, and the introduction of socio-economic development to broaden the beneficiary net. In the same year, sector charters were introduced as part of DTI’s attempt to enhance transformation by leveraging the knowledge and characteristics of each sector [19].

The introduction of the scorecard against which enterprises were measured established the need for a verification process to determine the BBBEE status level. The verification process validates disclosed and undisclosed BBBEE related information on measured entities. This process is fundamental in confirming whether the activities required to attain a BBBEE status have been implemented and that the certificate is a valid and accurate reflection thereof [20]. This process established the BBBEE verification industry which lead to DTI releasing the Verification Manual in 2008 to guide the minimum standards to which all verification agencies are obliged to conform in their verification assessments and evaluations [21]. The DTI further appointed the South African National Accreditation System (SANAS) to conduct the accreditation of verification agencies.

In 2011, the Preferential Procurement Regulations were revised which marked the first attempt at aligning the PPPFA to BBBEE. Prior to this change, there was flexibility in the choice of category of disadvantage that is preferred in procurement, e.g., considering only race or gender and procuring entities could allocate preference points at their own discretion. The revised 2011 regulations meant that preferential procurement points were now strictly allocated based on a company’s BBBEE status level.

In 2013, the BBBEE Act was amended to address all known and perceived weaknesses in the previous regulatory framework. This was followed by the third rendition of the Codes of Good Practice in the same year to effectively bring in new changes to the BBBEE scorecard. Table 1 below provides a comparison of the 2005, 2007, and 2013 BBBEE Scorecards (the points below exclude the additional bonus points that can be awarded to entities, see Table A6 in Appendix A):



**Table 1.** 2005 vs. 2007 vs. 2013 BBBEE scorecard.

	Codes of Good Practice 2005	Codes of Good Practice 2007	Codes of Good Practice 2013 *
Element	Weighting	Weighting	Weighting
Ownership	20	20	25
Management and control	10	10	15
Employment equity	10	15	–
Skills development	20	15	20
Preferential procurement	20	20	–
Enterprise development	10	15	–
Enterprise and supplier Development	–	–	40
Residual element	10	–	–
Socio-economic development	–	5	5

\* Both the 2005 and 2007 Codes scorecard measured entities BBBEE status out of elements that summed up to 100. The 2013 Codes of Good Practice scorecard adjusted the weighting to 105 points.

The current weighting as per the 2013 Codes shows further fundamental shifts in the definition of empowerment. In particular, the incentives are designed to target enterprise and supplier development. The amended scorecard increasingly placed an emphasis on ownership and skills development. The scorecard further adjusted the thresholds of the total annual turnover (see Table A2 in Appendix A) applied to Exempted Micro Enterprises (EMEs—enterprises that have an annual turnover of R10 million or less as per the 2013 Codes of Good Practice) and Qualifying Small Enterprises (QSEs—enterprises with an annual turnover of between R10–R50 million) to reduce compliance barriers for small businesses. EMEs are enterprises that are deemed to have a BBBEE status level four contribution and are therefore subject to no compliance, QSE are subjected to relaxed compliance whereas large entities are required to comply with all of the elements of BBBEE for the purposes of the measurement [19].

In 2014, President Jacob Zuma appointed the members of the BBBEE Advisory Council to serve a five-year term advising government on black economic empowerment. The council's responsibilities include reviewing the progress of BBBEE, drafting transformation charters on request and facilitating partnerships between organs of the state and the private sector [22]. In addition, the amended Act called for the establishment of a regulator. The BBBEE commission was therefore introduced in 2016 and mandated to oversee, supervise and promote adherence to the BBBEE Act [23].

Most recently, the Preferential Procurement Regulations were amended in 2017. Firstly, procurement thresholds were shifted, and the values associated with the 80/20 and 90/10 rules were significantly adjusted (whereas the 80/20 rule applied to contracts below R1 million and the 90/10 rule to contracts above R10 million in value respectively under the 2011 Regulations, the threshold shifted to R50 million under the 2017 Regulation, so that the 80/20 rule now applies to all contracts up to R50 million). The changes in the point system are detailed in Tables A3 and A4 in Appendix A. Secondly, a pre-qualification mechanism was introduced. This mechanism serves as a filter in the beginning of the procurement process to determine whether bidders qualify to compete for the tender. Organs of the state are now granted the discretion to restrict the procurement to certain defined categories: (a) bidders with a stated minimum BBBEE status level contributor, (b) exempted EMEs and QSEs, and (c) bidders contracting at least 30% of the contract to one or more of the eight sub-categories listed in Table A5 in Appendix A, largely focusing on black ownership of the bidding entity. Thirdly, the 2017 Regulations require a subcontracting condition in favour of subcontractors from a list of eight sub-categories (similar to that in Table A5 in Appendix A) in tender contracts above R30 million in value and where subcontracting is feasible [24].

Currently, public tender submissions are evaluated based on a two-step process. Firstly, all submissions are evaluated to check if they meet the functional or technical criteria. Secondly, all submissions that meet the technical criteria are evaluated based on the 80/20 or 90/10 rule depending

on value of contract with 80 or 90 of the points awarded based on price and the 10 or 20 based on BBBEE status level.

This overview of the development of BBBEE already reveals that there have been active and deliberate efforts towards improving the legislative, regulatory and policy environment to enable effective implementation of BBBEE. The BBBEE Act has been met by both design and implementation challenges which the key shifts presented above have sought to address. A detailed analysis on what necessitated these key shifts and responses to the changes is discussed in the key findings section below and underscores some of the challenges and tensions within the design and implementation of BBBEE.

#### 4. Theoretical Framework

Two main theories provide justification for the implementation of BBBEE namely social justice theory and organisational theory. The former explains BBBEE as a mechanism to restore equity and fairness, while the latter posits the intervention as a pathway to increased economic growth. The theory of social justice, which is described as everyone having the same rights under the law regardless of race, class, and gender, argues that ultimately, government is responsible for the determination of social advantages within an economy [25]. As a result, in cases where the distribution of social advantages is systematically unequal, government has authority to use its capacity to transform the structural basis of the economy such that there is equity and fairness [26]. BBBEE is the primary intervention through which the South African government is seeking to redress past injustice in the economy, with public procurement as a primary mechanism.

Organisational theory supports the above and contends that intra and inter-firm relational structures and the networks that are established within these structures affect who gets to participate in the economy [27]. Hence, if there are entrenched patterns of access that systematically benefit some groups and exclude others, inclusion of all members of society in the economy will remain unattainable. The theory therefore supports interventions that result in the private sector restructuring itself to include previously disadvantaged individuals in the economy and thereby ensuring equitable access. BBBEE pursues this through incentives that aim to alter the intra and inter-firm structures of capital and management control, promotion and development of employees, and supplier development. Organisational theory further suggests that the concentration of capital and vertical integration in key sectors of the economy preclude the entry of new ideas, innovation, and competition which all have adverse effects on growth [27]. Therefore, successful implementation of BBBEE would lead to opening of the economy to new entrants which could potentially result in new activities that stimulate economic growth.

#### 5. Analytical Framework

The logic underlying BBBEE can be considered in terms of a derived logic model presented in Figure 2 below. The model presented here is high level and simplified to describe the core pathways and does not attempt to be comprehensive of all the complexities. This model is used as an analytical framework through which to determine BBBEE's effect on aspects of its intended outcomes. It is important to note that BBBEE is a complex web of interdependencies between different stakeholders each with different roles to play in the implementation.

In its design, BBBEE combines a set of inputs and undertakes a set of activities to produce outputs which over time lead to immediate outcomes, intermediate outcomes, and the ultimate impact of meaningfully transforming the economy. Important to note in terms of the activities is the fact that these have been chosen as the main elements of empowerment and are therefore put forward as the determinants of the objectives that BBBEE is pursuing.

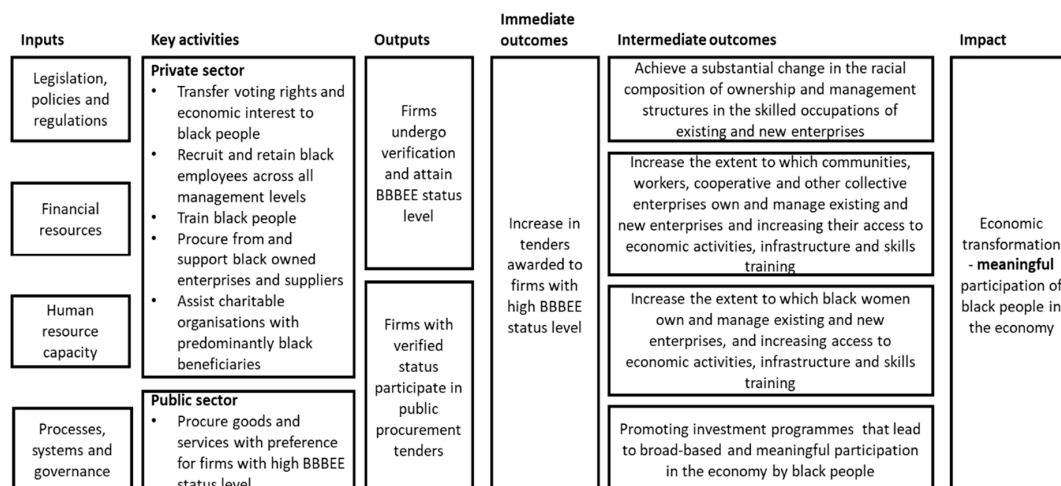


Figure 2. Derived logic model for BBBEE (Source: authors' own analysis).

Five critical assumptions underlie BBBEE's logic as described above and these need to be met for the desired impact to be realised. Firstly, there is an assumption that all relevant stakeholders have a shared understanding of the conceptualisation of BBBEE i.e., what the legislation is intended to do and how it will achieve this. Secondly, the various public entities publishing legislation, policies and guidelines are all aligned in their conceptualisation of BBBEE and there is complementarity in the design aspects communicated in the varying documents to minimise inconsistencies in implementation. Thirdly, there is an assumption that the private sector is willing and able to supply the required changes (as outlined in the activities) in the face of high demand. Hence, the state would only need to stimulate the demand through the provision of incentives and the type of transformation being targeted will be self-regulated by the private sector.

The above explanation of the logic alludes to the fourth critical assumption which is that the BBBEE elements that encompass empowerment and the activities that are tracked within each element are the appropriate determinants of the envisioned outcomes. These elements refer to the activities that the private and public sectors need to undertake. For example, there is an assumption that training black people is an appropriate component to contribute to transformation of the economy. In instances where these assumptions do not hold, the underlying logic outlined above is unlikely to materialise. Lastly, there is an underlying assumption that the verification undertaken to ensure that the activities have taken place is conducted uniformly and consistently such that the same BBBEE status refers to similar underlying activities conducted by different firms.

In line with best practice in policy design, the above derived logic model should be accompanied by a monitoring and evaluation framework that clearly outlines the key indicators for inputs, activities, outputs, and outcomes. The framework should guide data collection and analysis to track changes resulting from the intervention. Moreover, it should outline how these indicators will be monitored and provide a plan for evaluating the design, implementation, and overall performance against the objectives [28]. This would require clear articulation (both quantitative and qualitative) of what good performance against the objectives is and specification of milestones against which progress will be assessed.

The paper draws from this logic to understand what progress has been made to date on the key outcomes. Specifically, the findings in the next section comprise what has worked and key challenges with the inputs, outputs, and outcomes, and draws conclusions on whether the underlying assumptions prevailed in practice. The discussion seeks to establish whether the issues predominantly emanate from legislation and policy formulation, execution or both and to what extent potential barriers were and are factored into the design to increase the likelihood of impact.



## 6. Key Findings

The achievements and weaknesses of BBBEE are outlined in this section and structured to follow the derived logic model discussed above, i.e., it presents findings on the inputs, activities, outputs, immediate and intermediate outcomes, and impact. It is important to note here again that, due to the lack of rigorous evaluations into BBBEE, this study makes no conclusive statement about the overall impact of BBBEE and instead presents factors that provide insight into the effectiveness of the design and implementation.

### 6.1. Inputs

#### 6.1.1. Legislation, Policies, and Regulations

There are two main findings on the legislation, policies, and regulations. A positive one is that all three components have led to enabling environment for the implementation of BBBEE. The other is negative and pertains to the effect of varying interpretations of the legislation and empowerment.

##### 1. Enabling Legislative and Regulatory Environment

The BBBEE Act, PPPFA, regulations and Codes of Practices have created an enabling legislative environment which has served as a catalyst in the uptake of black economic empowerment, especially within the public sector. As illustrated in the historical evolution of BBBEE, there has been significant progress made in improving both the legislation and regulations since the introduction of the BBBEE Act of 2003. The focus was on redesigning and clarifying the policy to improve BBBEE. The quote below from an interviewee further suggests that the changes have been important to increasing private sector participation.

“If you talk to us, we will say the industry works better if we self-regulate but the change brought about by self-regulation is not huge and is not fast enough. We only move when there is a threat of legislation being imposed on us.” (Interviewee 2)

The State of Procurement Spent in National and Provincial Departments report (2018) contends that public procurement reforms have given rise to the constitutional principle of procuring goods and services in a manner that is fair, equitable, transparent, competitive, and effective [29]. In line with the derived logic model presented earlier, this constitutes a catalyst in driving implementation. From an input-perspective, there is clear evidence that BBBEE has been continuously adjusted in response to perceived shortfalls in achieving the intended outcomes.

##### 2. Varying Interpretations of the Legislation and What Constitutes Empowerment

The literature suggests that a few years into BBBEE's implementation, a narrow definition of empowerment prevailed to the detriment of meeting the intended objectives of the Act. The initial emphasis was primarily on equity transfer through business transactions and did not require entities to undertake initiatives to promote BBBEE within their industries and value chains [30]. However, this approach was heavily critiqued for its slow progress and only benefitting a handful of politically connected individuals [31]. The shift to a broad-based definition of empowerment sought to fast track the re-entrance of historically marginalised communities into the mainstream economy by explicitly broadening its beneficiary base to include all black people including investors, employees, management, suppliers, and communities. The intent behind this was to broaden the benefits to beneficiaries who would not necessarily have the means and resources to acquire an equity stake or be appointed into a management position [18].

Insights emerging from the interviews with various stakeholders reveal that, despite the changes, there continues to be different perspectives of BBBEE held by different stakeholders within the public sector. For example, a significant disconnect exists between different stakeholders' perspective on the role of procurement within BBBEE with some viewing it solely as an element within the scorecard and

others only considering preferential procurement under the PPPFA. Thus, in referring to “preferential procurement”, one interviewee stated, “Businesses seek suppliers that are compliant because it affects their BEE status. The lower the compliance of your suppliers, the lower your preferential procurement” (Interviewee 3). The use of “preferential procurement” here is clearly in relation to measurement of BBBEE level under the codes. In contrast, another interviewee stated, “The PPPFA was . . . implemented in 2001 to allow for preferential procurement. When you award a contract, depending on the threshold, you would use 80:20 and 90:10 preference system” (Interviewee 4). Here, “preferential procurement” refers specifically to the award criteria in public tenders. In each case, the focus is on only one area where preferential procurement applies, i.e., public versus private supply, and the complete absence of any reference to the other area illustrate the divergent perspectives.

While such different perspectives could be of value to the conceptualisation of BBBEE, there is also the real risk that a particularly narrow perspective could dominate within particular stakeholder groups, resulting in a lack of alignment in the implementation of the legislation. The insights emerging from the interviews seems to suggest that such misalignment, or at least tension, is indeed present in BBBEE, both in its historic development and current form.

Similar findings exist within the private sector. The BBBEE Act makes explicit reference to “meaningful participation” throughout its outlined objectives. The definition and conceptualisation of participation have been a source of contentious debate across the public sector and various private sector stakeholders implementing BBBEE. This has specifically been an issue within South Africa’s mining sector. According to Section 2.1.1 of the Mining Charter, “an existing mining right holder who has achieved a minimum of 26% BBBEE shareholding shall be recognised as compliant for the duration of the mining right” [32].

In practice, mining rights are typically valid for a 30-year period which means that mining entities are allowed to claim recognition for previous BBBEE transactions regardless of whether the BBBEE entities involved have sold their interests or shares, consequently reducing the mining company’s 26% BBBEE ownership threshold. This principle, known as ‘once empowered, always empowered’, has been a source of contentious debates on whether this constitutes meaningful participation. Although the principle currently only applies to the mining sector, the effect is not negligible due to the importance of the sector in the economy. It accounts for 7% of the country’s nominal GDP [33] and is the largest industry in four of South Africa’s nine provinces, employing one in every 40 working individuals [34].

Moraka’s (2016) study on transformation perspectives held by mining executives contends that the mining industry justifies its slow pace of transformation by pointing at inconsistent, varying legislation and definitions governing transformation, limited skills available from historically disadvantaged groups and cautioning not to compromise the sustainability of mining firms by marginalising white males and white youth with the objective of addressing racial imbalances [35]. The study argues that without a clear understanding and definition of transformation, the mining sector will continue to use this as justification for the slow pace of transformation [35].

In addition to the above, the financial sector codes comprise two additional elements: (1) empowerment financing and (2) access to financial services. These two additional elements allow enterprises within the financial sector to score points for the provision of affordable housing, financing black SMMEs, and agricultural activities and investing in various types of transformational infrastructure. These elements are criticised by some sectoral stakeholders as not core to empowerment because banks and finance enterprises already have a profit incentive to undertake these activities as part of their core business, hence points are awarded for empowerment that would have taken place without BBBEE.

A key theoretical assumption presented in the derived logic model is that for the objectives of BBBEE to be met, various public entities responsible for both creating legislation, policies, and guidelines and those implementing across different spheres of government need to be aligned and share a common understanding of the conceptualisation of BBBEE. This is imperative in ensuring that there is a complementarity in the design aspects to minimise inconsistencies in interpretation and implementation. The contention surrounding these elements reiterate a persistent design challenge with BBBEE: what

exactly is meant by empowerment and meaningful transformation? A question that various changes to the legislation, policies and regulations have sought to and failed to fully answer. As a result, a common and shared understanding of BBBEE continues to be elusive, both within the public sector and within various private sector industries.

#### 6.1.2. Budgets and Funds

Budgets and funds differ for public and private sector stakeholders. A key challenge for private sector actors emerging from the literature is that financing from commercial banks continues to be a challenge. Ngubane's study (2009) cites Ackerman and Meyer (2007) to critique the process the commercial banks use to assess a business's need for financing as well as the ability to service debt. Ngubane (2009) argues that first time investors often do not have a history to make a comparison, thereby creating barriers for these businesses to access funding from banks [36]. The scholars further found that, despite the Financial Sector Charter creating a need to fund BBBEE, commercial banks did not have separate credit policies to cater for BBBEE. Ackerman and Meyer (2007) identified additional factors that limit BBBEE firms from obtaining funding, including little to no own equity, absence of acceptable security, no or poor credit history, and lack of management or technical skills [36]. Moreover, Hamann (2008) attributes inaccessibility to finances to financial institution biases. The scholar contends that financial institutions have been geared to serve the needs of the minority white section of the population, this has resulted in biased resource allocations to the disadvantage of the black majority, especially women [37]. The BBBEE Commission has further highlighted that access to funding continues to be a challenge for black people creating a fertile ground for fronting in the financial sector [38]. Interviewee perceptions confirmed the literature on these points. One interviewee explained: "On the financing side, if you want to finance a black company you often find that they don't have their own capital contribution . . . You'll also find that they don't have balance sheets that often cannot be funded through a bank as they find it risky. It is difficult to attain financial assistance from a bank . . . in industries where participation requires a lot of capital that's where we've seen less success. The lack of capital often results in the small black suppliers partnering with a bigger white firm" (Interviewee 7).

#### 6.1.3. Human Resource Capacity

There is limited evidence on the extent to which human resource capacity across all relevant stakeholders has been put in place, however some findings suggest that challenges exist. As mentioned earlier in the paper, the BBBEE Advisory Council was established to provide guidance and overall monitoring on the state of BBBEE performance in the economy in order to make policy recommendations that address challenges in its implementation [39]. Kasuto (2009) highlights the time lag in the establishment of the council as an implementation flaw which resulted in a key gap in BBBEE's overall monitoring and evaluation [40]. The BBBEE Commission was also similarly only established in 2016 to monitor implementation and compliance. The establishment of these institutions was in part a response to limited human resource capacity in DTI to implement and oversee BBBEE [40].

Nonetheless, DTI's capacity to oversee the financial sector is identified as a key challenge in the interviews. Interviewees critiqued the discretion certain sectors, such as the financial sector, have had in determining their own rules for empowerment and further highlighted the lack of oversight from DTI in reviewing the sector codes to ensure that the sector contributes meaningfully, stating: "DTI does not have capacity and skills to properly review the codes and ensure alignment" (Interviewee 5).

#### 6.1.4. Processes, Systems, and Governance

The requisite processes, systems, and governance structures for public procurement have been progressively implemented with changes and improvements over time. A key gap is with respect to monitoring and evaluation of BBBEE. Kasuto (2009) and Amber and Badenhorst-Weiss (2012) contend that the monitoring and evaluation systems of BBBEE are inadequate and ineffective. The former specifically highlights that there is no monitoring and evaluation framework, including a comprehensive

set of indicators, to measure BBBEE's progress [40]. Although reporting requirements facilitate collection of data on activities and outputs, there is limited credible and relevant data and information being collected to track performance against the key outcomes.

The amended Act of 2013 prescribes specific functions to be fulfilled by the BBBEE Commission as part of its mandate to oversee adherence to the BBBEE Act. In terms of functions related to the data, the commission is required to maintain a registry of major BBBEE transactions above a threshold determined by the minister. It is also required to receive and analyse BBBEE-related compliance reports from public and private enterprises [23]. In addition to the reports submitted, the commission may also conduct site visits to verify the correctness of the information received. Based on these submissions, the commission annually releases reports on the national state of transformation and trend analyses. The commission's 2019 report, however, notes limitations in its analysis, including incomplete reports submitted by entities, inadequate disclosure of demographics of the board of directors on the annual reports of most entities and inconsistent BBBEE certificates templates used by verification agents amongst other limitation [31]. The report notes that this poses a challenge to the analysis of transformation. The interviews support this finding, with one interviewee stating: "The third challenge is if you look at reporting, we are struggling with reporting. Even though legislation is compulsory, we are not reporting. Whatever is being published is not a representation of all the companies" (Interviewee 2).

With respect to procurement systems and data, the National Treasury does not have a comprehensive instrument for monitoring and evaluating performance of procurement [41]. Although the Central Supplier Database (CSD) was established to improve the efficiency and effectiveness in government procurement, reduce red tape and create an enabling environment for businesses to contract with government [29], this only happened in 2016, 13 years after the PPPFA was introduced and does not yet cover the entire public procurement market in South Africa. Furthermore, public bodies in South Africa have been strongly critiqued for their poor and fragmented record keeping systems, preventing the effective monitoring of racial preferences [42].

Despite the existence of a system which in part addresses the data problem, two significant gaps remain. The first is the lack of data on what is happening at the local sphere. Though there have been efforts through the CSD to collect and store consolidated data and information on prospective suppliers, there is still a significant data gap that exists at local government and state entities. This is largely due to the incompatibility in different systems of procurement across various spheres and public entities. This creates challenges in linking different supplier numbers used in the supply chain transactional systems, payment systems, and the CSD for the same supplier [29].

The second gap flows from the first because an inadequacy of data and monitoring at this first tier (the state as procurer) implies a shortage of data and systems to measure the effects at the second (main service providers) and third tiers (suppliers of main service providers) of procurement [4]. Hence, it is impossible to quantify the downstream effects of BBBEE where the broader benefits are intended to occur at a beneficiary level. Scholars further note that there is no subjective measurement either in the form of a measurement scale or monitoring tool of how empowerment beneficiaries perceive their own empowerment [43].

#### 6.1.5. Key Activities

As discussed in the theoretical framework, the inputs are converted into outputs through a set of activities in the implementation which differ for the private and public sectors. The key activities for the private sector include investment in skills development of black staff, changes to ownership structure to increase black ownership and support to charitable organisations that benefit black people. The public sector needs to procure goods and services with preference for black empowered firms.

There is limited evidence on whether the private sector trains black people, procures from and supports black owned enterprises, assists in charitable organisations with predominantly black beneficiaries, and transfers voting rights to black people. In cases where this is happening, the extent to

which this occurs is unclear, particularly within firms and enterprises that do not conduct business with government and therefore might not be incentivised to go through the verification process. The design of BBBEE is such that the existing verification process measures an entity's BBBEE status by confirming that the activities have taken place. Hence, the BBBEE status is a direct indication of whether the firms have performed the requisite activities. This is, however, only true in cases where verification is rigorous, consistent and uniform.

At a public sector level, however, government has actively sought to procure goods and services with preference for firms with high BBBEE status level. National Treasury's 2010 State of Procurement Spent in National and Provincial Departments report, which will be discussed in detail later in the study, provides some evidence on the extent to which government has sought to use its purchasing power to advance BBBEE's social objectives [29].

## 6.2. Outputs

In order to achieve the legislation's intended objectives, one of the key requirements is for firms to respond to the incentive by implementing the activities and undergoing verification in order to attain a BBBEE status level which raises their likelihood of selection to provide goods and services to the state. Hence, two key outputs, as highlighted in the derived logic model, are (1) firms undergo BBBEE verification to attain their status and (2) participate in public tenders to benefit from the advantage that a high BBBEE status facilitates. Emerging findings of both achievements and weaknesses related to these outputs since the inception of BBBEE are presented below.

### 6.2.1. Firms which Undergo Verification, Attain BBBEE Status, and Participate in Public Tenders

Table 2 below presents the suppliers registered on the CSD categorised by BBBEE status levels as of December 2017 [29]. The data illustrates that the outputs anticipated in the derived logic model have, to a certain extent, materialised.

**Table 2.** Suppliers registered on CSD as per BBBEE levels.

BBBEE Level	2016/17	% of Suppliers on CSD
Level 1	249,532	66.7%
Level 2	11,491	2.6%
Level 3	20,005	4.5%
Level 4	29,288	6.6%
Level 5	937	0.2%
Level 6	867	0.2%
Level 7	483	0.1%
Level 8	1239	0.3%
Non contributors	1412	0.3%
Unspecified	81,088	18.4%

The private sector has responded to the incentive and undergone verification to attain a BBBEE status level. Only 21.2% of the fully registered suppliers conducted business with government in 2016/17. While small, this data suggests that firms with BBBEE status are participating in government tenders. It is, however, important to note that while the above is evidence of a generation of anticipated outputs, due to the lack of a M&E framework, the available data cannot be compared to indicators to determine the extent to which the observed outputs are contributing to meaningful participation in the economy by all black people.

### 6.2.2. Challenges with Verification

As noted earlier in the overview and historical evolution of BBBEE, the establishment of the scorecard through the 2005 Codes of Good Practice established a verification industry. Challenges with the verification process included varying verification practices from agency to agency which resulted



in confusion in the market [44]. In recognition of these challenges and the vital role that the verification process plays in BBBEE compliance, methodologies followed by verification agencies required a clear, demonstrated understanding of the BBBEE framework and Codes of Good Practice. The DTI therefore released the 2008 verification manual and appointed SANAS to conduct the accreditation of verification agencies [44]. Nonetheless, challenges with inconsistencies in verification persist, with an interviewee noting: “The challenges becomes that a verification agency will interpret skills development in one way and say if [one entity] spends 6% of their budget on training of their staff they should therefore get full points and another agency will not award full points and say it was not the total of the salary bill. Sometimes when we say one company is level 1 and another level 2, there is no consensus on how that is measured” (Interviewee 2). Shava’s study (2016) highlights these persisting challenges, noting the high level of bureaucracy in the verification process that has caused confusion amongst emerging BBBEE companies and the need to phase out certificates issued by non-accredited verification agencies [45].

### 6.2.3. Limited Participation of the Private Sector

There is a general acknowledgement and consensus around the importance of the private sector’s role in the successful implementation of BBBEE. Visser et al. (2005) note that the private sector is “one of the best-placed institutions to make a significant contribution towards improving social and environmental conditions in Africa” [46]. The current BBBEE legislation binds the public sector, leaving the dependency of the private sector’s contribution to the extent to which they respond to the market incentive.

Prior to 2005, the government largely granted the private sector the discretion to define and finance black empowerment in their own economic interest. However, this had very little impact on wealth ownership [47]. As highlighted in the theoretical framework, it was assumed that the private sector would self-regulate. This assumption, however, did not hold true. While the BBBEE Act itself does not explicitly detail the private sector’s role in implementing BBBEE, the Codes of Good Practice clearly acknowledge that the BBBEE strategy would be ineffective if it does not have the support of the private sector [18]. The codes call for the private sector to consider the principles and guidance when implementing BBBEE initiatives [18].

Despite guidance from both legislation and the codes on how the private sector should implement BBBEE through the sector charters, available literature and documentation suggest that participation remains limited. Upal (2014) cited in Iheduru (2008) states that while black businesses have supported BBBEE, white private sector businesses have taken a more cautious approach [48]. In addition, the BBBEE Commission’s 2017 report on the National Status and Trends on Black Economic Empowerment Report cites low levels of reporting (e.g., only 30% of the 401 listed JSE entities reported) despite mandatory reporting for all publicly-listed entities on the JSE and spheres of government on an annual basis [31].

Furthermore, in cases where the private sector is involved, the literature notes that transformation cannot simply be pursued through the reform of white businesses into black businesses. Instead, transformation should also pursue the development and growth of black owned businesses [49]. Ramphela (2008) echoes this critique by describing BBBEE as a form of tokenism for transformation that has focused on compensating previously disadvantaged people as opposed to creating opportunities for meaningful contribution from all citizens [50].

### 6.3. Immediate Outcomes

Provided that the set of inputs and activities have been effectively implemented to produce the anticipated outputs and the underlying assumptions have materialised; over time the outputs would be expected to lead to immediate outcomes. These include an improvement in the number of firms that meet the BBBEE criteria and an increase in tenders awarded to BBBEE-compliant enterprises. This section presents findings on achievements and weaknesses at the immediate outcomes level.

An achievement is evidence of public procurement spending on BBBEE-compliant firms. This is countered by non-compliance of private sector firms which is a key weakness.

### 6.3.1. Increased Public Procurement Spending on Targeted Beneficiaries

The *State of Procurement Spent in National and Provincial Departments* report, drawing on evidence and data from the CSD, highlights that there were challenges in linking different supplier numbers used in the supply chain transactional systems, payment systems and the CSD for the same supplier. Of the total R220 billion spent by national and provincial government in 2016/17 (out of an overall total of R938 billion annual procurement spent across the entire public sector), only R177 billion had complete data to allow for analysis (that is about 19% of the total procurement spent). Moreover, of the R177 billion, 53% is spent on suppliers where the black ownership could not be determined [29]. Nonetheless, Table 3 provides some insight into supplier characteristics based on the R177 billion spent. Of this, 47% was spent on suppliers who are Level 1 and Level 2 BBBEE compliant [29]. The figures from April to December 2017 show an increase in the proportion of Level 1 suppliers from 30% to 34% of the total spending. If this trend continued in the remaining three months of the 2017/18 financial year, it would point towards an improved prioritisation of suppliers with a high BBBEE status level.

**Table 3.** Total spent on BBBEE compliance levels.

BBBEE Level	2016/17 (R Billion)	% of Total Spent
Level 1	54	30%
Level 2	30	17%
Level 3	13	8%
Level 4	20	11%
Level 5	4	2%
Level 6	3	2%
Level 7	2	1%
Level 8	5	3%
Non contributors	2	1%
Unspecified	44	25%
Total	177	100%

As mentioned earlier, one of the BBBEE Act's objectives is to increase the extent to which black women own and manage existing and new enterprises. Table 4 shows the spending by different ownership categories of the targeted groups.

**Table 4.** Total spent on suppliers per ownership category.

Target Group	Total Spent (R Billion)
Black women	19
Black youth	8
Black rural/township businesses	5
Black military veterans	0.50
Black disabled	0.24

Overall, R19 billion went to suppliers with black women ownership, R8 billion to black youth owned suppliers and lesser proportions to the remaining categories. These target-group categories presented above are not mutually exclusive, in other words a black woman can also be black youth and disabled. Again, due to the data limitations and the lack of historic data to track trends, the above only suggests that there is some spending on the targeted groups. However, it is not clear the extent to which this spending and the number of beneficiaries reached are commensurate with what is required to achieve BBBEE's objectives.

### 6.3.2. Non-Compliance

Commitment from both the public sector and private sector to procurement regulations is seen as a critical success factor for the achievements of BBBEE's objectives [51]. The lack of compliance to BBBEE legislation has emerged as a strong theme from both the literature and interviews. The scorecard in the latest Code of Good Practice defines a non-compliant BBBEE contributor as any entity that scores less than 40 points. This comprises entities that do not implement BBBEE at all and those that do implement, but fail to meet the targets set for each element and therefore score poorly.

Watermeyer (2003) notes that a contributing factor to BBBEE's failure to achieve its socio-economic objectives through procurement in particular is due to lack of compliance and practices that are not contractually enforceable [52]. According to the BBBEE Commission's 2017 report, non-compliance is indicative of government failure to consistently and effectively implement BBBEE across the board [31].

There are varying underlying factors that can be used to explain non-compliance. Mofokeng, Giampiccoli, and Jugmohan (2018) contend that there is a negative view and perception towards both the policy intention of BBBEE and what it has achieved thus far [49]. These perceptions have had implications on the support that BBBEE has received, particularly from the private sector. Ramlall (2012) quotes Milovanovic (2010) who explains that there is the view that BBBEE compliance "is merely another cost of doing business in South Africa" [46].

Lastly, Kruger (2011) conducted an empirical survey to analyse the impact of BBBEE on 10 selected dimensions of business performance. Most of the respondents disagreed with the notion that BBBEE compliance would improve the performance of the entities they worked for [53]. Perceptions of respondents in the study revealed that the impact of black economic empowerment on South African business are mainly negative [53]. These negative perceptions on the value of implementing BBBEE according to the study potentially explain the challenges relating to non-compliance.

### 6.4. Intermediate Outcomes and Impact

Has BBBEE achieved its objective to promote economic transformation in South Africa? As alluded to earlier, that question cannot be conclusively answered due to the limitations in the evidence on BBBEE. Nonetheless, this section presents key challenges whose presence illustrate how the achievement of the desired impact has possibly been limited.

#### 6.4.1. Fronting

A key finding that suggests that the achievement of the desired outcomes is possibly attenuated is the presence of fronting. The BBBEE Act defines fronting as "a transaction, arrangement or other act or conduct that directly or indirectly undermines or frustrates the achievement of the objectives of the BBBEE Act or the implementation of any of the provisions of the Act" [23]. Fronting practices can manifest in various ways, the three most common forms of fronting identified by DTI's guidelines on complex structures and transactions and fronting include window dressing which involves the introduction or appointment of black people to a business purely based on their race. People who are appointed are often discouraged and prevented from participating in the decision making and core activities of the business [54]. The second is benefit diversion, which occurs when the economic benefits of a project are being awarded based on a favourable BBBEE rating, but the benefits are diverted away from the black participants upon whom the rating is based [54]. Lastly, fronting can also manifest in the form of opportunism, which occurs when joint venture type of arrangements with black people are pursued to boost one party's BBBEE status. These types of arrangements often outsource a non-compliant BBBEE company or supplier to undertake the bulk of the work [54]. The BBBEE Commission further identifies fraudulent certificates as another key issue. Interviewees confirmed fronting as a major challenge, with one interviewee noting:

“The other form of resistance is also picked up on the number of increased cases of fronting ... fronting can happen under all the elements; it is not limited to the ownership aspect”. (Interviewee 3)

Fronting has and continues to challenge the implementation of BBBEE and has been highlighted as a loophole in the design of BBBEE [55]. The prevalence of fronting in the system was a key justification for the revision of the BBBEE Act in 2013. DTI acknowledged that the sophistication of fronting practices necessitated strengthening enforcement in this area [56].

#### 6.4.2. Corruption

In addition to fronting practices, the study finds that corruption has been identified in the literature as another factor that has affected the effective implementation of BBBEE. Corruption can be defined as “behaviour which deviates from the formal duties of a public role because of private-regarding (personal, close family, private clique) pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence” [57]. Corruption Watch, a non-profit organisation that provides a platform for reporting corruption, defines a business individual paying a bribe to a government official in order to be given a government contract or license as a form of corruption [58]. Pike, Puchert, and Chinyamurindi’s study (2018) on the perceptions of SMEs on the future of BBBEE sought to understand BBBEE and its influence on the economy and operating industries. The study finds that the current BBBEE model promotes tender corruption and economic strain [59]. It further illustrated that BBBEE was increasing the number of incompetent firms and promoting tender corruption through tenders being awarded to firms that do not fit the BBBEE criteria. Similarly, Whittles argues that the BBBEE tender award system has opened doors for corruption [60].

#### 6.4.3. Constraints for Black-Owned and Qualifying Small Entities

One of the long-term outcomes of BBBEE is to achieve structural change in new and existing enterprises. To achieve this, the scorecard prioritises development of black-owned enterprises and suppliers. While the existence of firms with level 1 and 2 BBBEE status suggests that some supplier and enterprise development is being undertaken, the literature and findings from the interviews suggest that there continues to be various constraints for black-owned entities that hinder these potential beneficiaries from benefitting from BBBEE. This is despite a change to the regulations over time to prioritise SMMEs for support. One interviewee noted in this regard that “we’ve seen that [black] suppliers don’t have sufficient capacity and secondly depending on the size of the project they are implementing, you often find that they don’t have sufficient capital, they also don’t have the necessary contacts to enable them to navigate through their various industries. These make it difficult for them to comply with the industry standards” (Interviewee 7). Biyela’s (2007) study on black-owned tourism businesses identified a lack of entrepreneurial skills, access to finances, inaccessibility to material resources required to acquire ownership and corruption within the tourism industry as key barriers that prevent black-owned small entities from benefitting from BBBEE. In addition, negative perceptions held by businesses towards implementing BBBEE could further be used to explain the limited support provided to SMMEs [53].

Additionally, the South African Supplier Diversity Council (2013) and Hamann (2008) contend that BBBEE has focused on the formal economy and major enterprises within the economy which has created a bias towards larger businesses, particularly in procurement practices. This has effectively been at the cost of emerging small and micro enterprises or the informal sector generally. Hamann (2008) argues that this contradicts the fact that increased targeted support for the informal sector and small entities would contribute more to achieving BBBEE’s broad-based agenda. Furthermore, it was revealed during interviews that small enterprises further lack the necessary social capital that would create an enabling environment to navigate through their respective industries (as expressed in the quote in the previous paragraph). This indirectly creates a barrier to opportunities.

The exclusion of the informal sector is intrinsic to the use of public procurement as a vehicle for delivering on BBBEE objectives. The way in which public procurement is conducted in South Africa, even for low-value contracts that could arguably be fulfilled by suppliers in the informal sector, requires by implication that a supplier participates in the formal sector. For example, one qualification criterion for all government suppliers, including those supplying under the low-value price quotation system, is registration on the CSD, which necessitates verification of the supplier's business registration, banking details, tax compliance status, etc. and thus assumes that all suppliers operate in the formal sector [61].

This evidence points to limitations in the effectiveness of activities undertaken by the private sector to meet the enterprise and supplier development element which hamper BBBEE's potential to meet its long-term outcomes, particularly by means of public procurement.

#### 6.4.4. Enrichment Versus Empowerment

As mentioned earlier, there have been active attempts at revising BBBEE to address the challenges and gaps in both its design and implementation. BBBEE's initial narrow focus on ownership as a form of empowerment has been heavily critiqued as a design weakness that has facilitated the enrichment of a few politically connected beneficiaries at the cost of broad-based empowerment that looks beyond ownership [47]. Enrichment refers to the unintended consequence of the design of BBBEE that resulted in a few socially and politically connected black people benefiting from empowerment deals at the cost of the legislations' broad-based targeted beneficiaries.

In practice, the large number of those intended to be beneficiaries of BBBEE remained excluded from participation in the economy [62]. Tensions between enrichment versus empowerment have emerged from political elites that have been major beneficiaries of BBBEE deals. Noon (2009) argues that procurement contracts have benefitted larger black-owned businesses at the expense of small and medium sized black businesses [17,42]. Both Noon (2009) and Horwitz (2011) contend that BBBEE has failed to successfully empower the majority in the labour market or the underclass of a large unemployed sector. Racial inequality therefore only declined at the very top of the income bracket [17,42]. An interviewee, with respect to BBBEE achieving its targets, stated that "it could have been better, especially in the ownership it is still dependent on who you know and not what you can do. Firms are still selling shares within their networks and on the community development side there is more that can be done" (Interviewee 1).

Furthermore, Milovanovic (2010) notes that it has become a compliance exercise. Entities that implement BBBEE do not believe in the benefits of the intervention's initiatives but instead implement it as a compliance requirement [46]. As a result, these entities often regard transformation as separate from their core business and do not integrate it into their strategies and annual business plans. There is therefore evidence of, at least from a procurement perspective, a continued narrow emphasis on the ownership dimension of BEE as opposed to a broader set of elements.

#### 6.4.5. Limited Community Empowerment

In line with BBBEE's broad-based intent, one of the BBBEE Act's objectives is to "empower rural and local communities by enabling access to economic activities, land, infrastructure, ownership and skills" (BBBEE Act, 2003). Magi's study (2010) explores the viewpoints, practicalities and challenges of the tourism-related BEE initiatives towards achieving community empowerment and development in KwaZulu-Natal. While Spykes (2002, quoted in Magi 2010) notes the commitment of tourism business associations to transformation, Magi's study contends that BBBEE's delivery of tourism initiatives, which are meant to benefit previously disadvantaged communities, need to be improved and reports negative community perception towards BBBEE [63]. This particularly relates to selective and preferential treatment towards accessing BBBEE deals, dependence on political affiliation, fronting, poor skills-development planning, lack of capital or funding, and support for emerging entrepreneurs (Magi, 2010). Patel and Graham (2012) further note that there is limited information available on broad



based beneficiaries that benefit from BBBEE. It is therefore unclear who benefits at this level and to what extent [64]. Further research is required to understand the real impact of BBBEE at a community level.

## 7. Discussion

The literature and interviews together provide a basis for an understanding of public procurement in the context of BBBEE. The findings presented above illustrate that while BBBEE has registered some achievements, particularly with the promulgation of relevant legislation and regulations to give effect to its implementation, it is also clear that the intervention has been met by challenges both within its design and implementation. These challenges have been highlighted and used to critique the intervention's slow pace at redressing the systematic injustices effected by apartheid, thereby bringing into question its effectiveness in the country's transformation agenda. This section identifies and discusses the key themes emerging from the findings presented above.

### 7.1. Policy and Implementation Coherence Versus Flexibility

As highlighted in the derived logic model, an important underlying assumption of BBBEE is alignment and complementarity in policy design and implementation across all relevant public-sector stakeholders. The study suggests variation in interpretation and implementation. While this is not completely negative, the differences are significant in some cases, which has resulted in policy incoherence, contradictions and state organs working independently and at cross-purposes on different aspects of BBBEE. The direct implication of these disintegrated efforts is poor targeting to achieve BBBEE's common legislative objectives. This incoherence in policy highlights the need for the existing central bodies, namely the DTI and the BEE Commission, to increasingly play an active role in providing oversight on the implementation of BBBEE and ensuring that there is integration. The fact that public procurement and its BBBEE dimension in the form of the PPPFA, in contrast, reside wholly under the National Treasury's mandate creates particular institutional difficulties in this pursuit of policy coherence.

The findings further reveal a tension between policy coherence and flexibility. This particularly plays out in the evolution of the preferential procurement regulations outlined in the historical evolution of BBBEE. Whereas the 2011 Preferential Procurement Regulations applied a uniform approach to the implementation of BBBEE in public procurement, the 2017 Regulations sought to apply a level of flexibility similar to the sector specific charters which provide for the variances in the different contexts in different sectors. However, this opens up potential risks of policy incoherence as highlighted above. The challenge therefore lies in achieving flexibility in procurement generally and in preferential procurement specifically without compromising coherence.

### 7.2. Procurement as a Lever to Achieving BBBEE Objectives

"Procurement is almost at the tail end. Suppliers can only start accessing government opportunities when once they have formed the enterprise and they have developed themselves to a position where they can play in that space" (Interviewee 4). This insight from the interviews accurately captures the findings with respect to the role of procurement in BBBEE. Despite the integral role procurement plays in the intervention, black-owned and qualifying small entities continue to face constraints. Hence, while procurement serves as a critical lever, it requires a supplier market that is enabled to participate in order to be effective. Although the inputs have been in place in the form of legislation, budgets, resource capacity, and systems; the incentive inherent in preferential procurement has not led to the reduction of the barriers facing black-owned firms. There is a need for a clear linkage between supplier development and procurement, some of which can be seen with changes to the scorecard to focus more on enterprise development. The intervention needs to clearly draw links to supplier development and ensure the barriers are directly reduced through compliance with BBBEE. In the absence of critical factors to create an enabling environment for suppliers to enter the economy, the procurement mechanism will continue to produce suboptimal effects on transformation.

### 7.3. Meaningful Transformation

An important underlying assumption of BBBEE design is for the procurement incentive to act as a catalyst for the private sector to self-regulate and ensure the requisite change to ensure economic transformation. The evidence presented in this study suggests that this assumption did not, in most cases, materialise. There is some evidence of the expected outputs being generated, e.g., increased participation of targeted beneficiaries and BBBEE transactions and changes in ownership patterns and evidence of the immediate outcomes being realised, e.g., an increase in public funds spent on such BBBEE-compliant firms. BBBEE continues to be plagued by several challenges in implementation that have attenuated the extent to which longer-term objectives have been achieved. Challenges, such as non-compliance and fronting, demonstrate that the incentive led to undesired effects, either through the private sector opting out of BBBEE entirely or participating in ways that did not lead to the desired change, thereby undermining the intervention's objective to achieving greater participation of black people in the economy. Moreover, the elements and the activities required are not uniformly verified. Given disparities in implementation and the lack of impact assessments, it remains unclear whether these elements are appropriate determinants of the intended outcomes. In addition, scholarly critiques on BBBEE's contribution to enrichment and the elitism of a few individuals and procurement contracts largely benefiting established businesses further suggest that the desired "broad based" intent did not necessarily filter down to the broader previously disadvantaged individuals. Furthermore, contentions and critiques towards the "once empowered, always empowered" principle bring into question issues around what meaningful empowerment should look like and reveals the various contending interpretations and perspectives of empowerment and transformation.

## 8. Conclusions and Recommendations

Overall, the study has explored public procurement in the context of BBBEE in South Africa with the primary goal of determining whether BBBEE, with its procurement dimension, has achieved its objective to promote economic transformation. A key contribution of the paper is the development of a derived logic model that outlines how the intervention is intended to work. It is then used to evaluate the performance of BBBEE to date. An important emerging finding is the lack of effective monitoring and reporting systems, data, and comprehensive research to measure the implementation of BBBEE, thereby limiting the study's ability to make any conclusive judgements on the interventions' effectiveness, particularly in the context of public procurement.

Nonetheless, the paper revealed that—since its inception—there has been major deliberate shifts in the evolution of BBBEE and its associated instruments to improve its implementation. The key major shifts focused on aligning policy, legislation, and regulations to the broader definition of empowerment moving away from the limited focus on ownership.

The study reveals that the intervention's effectiveness has largely been undermined by various challenges. In the context of the design of the legislation, these include the unintended barriers regulations have created for small businesses and the limited participation of the private sector in implementing BBBEE, such as the private sector. Challenges related to fronting, non-compliance, and corruption, the enrichment of the most politically connected and wealthy blacks at the expense of the targeted groups and the constraints for black-owned qualifying small entities further highlights the policy incoherence of various organs of the state implementing BBBEE. As a result of the focus towards broad-based impact, the design of BBBEE inherently speaks to various disciplines. However, in practice this has either led to various interpretations of the legislation's objectives or public entities working in silos informed and influenced by their disciplines and areas of focus. Considering the scale of BBBEE and the fact that it has been in place for over 16 years, the lack of rigorous evidence on how it is performing against its key objectives is both a design and implementation shortcoming.

In light of the findings presented above, the study suggests a set of recommendations intended to guide improvements of BBBEE going forward.

- Development of a Theory of Change detailing the logical and causal links and assumptions underpinning BBBEE.
- Development of a monitoring and evaluation framework for BBBEE to assess performance and progress towards objectives.
- Adjustments to the current CSD to allow for supplier numbers to be linked to supply chain transactional systems and payment systems. This will provide an opportunity for overarching analysis on government spend across all public service institutions, including local government and state-owned entities.
- Proactive role by the DTI and the BEE Commission in providing policy coherence at the centre to ensure that there is a shared understanding on how to implement BBBEE's policy intent by various organs of the state, including in relation to public procurement.
- Promotion of cross-functional communication and collaboration across the various organs of the state to ensure policy integration by DTI and the BBBEE Commission.
- Review of the current legislation and the role that the private sector currently plays to consider promoting and creating incentives for the private sector to be actively involved in transformation and empowerment.
- Review of the current regulations to reduce the unintended barriers created for small business.
- Review of the current legislative framework for preferential procurement to allow for more flexibility in different environments or sectors, while retaining strong links to the main BBBEE system under the BBBEE Act, thereby ensuring overall policy integrity.
- Increased oversight of the sector codes by DTI to ensure alignment to the generic codes.

The findings and insights from South Africa's experience with implementing BBBEE presents a case for broader lessons to be learnt for SPP, specifically as it relates to the social aspect. The key lessons for SPP drawing from BBBEE are distinguished into lessons for the design and implementation. Although these lessons are drawn specifically from the South African case, these are intended to apply generally to economic, environmental and social considerations within the public procurement process.

## 9. Design

Political support and willingness for a formal and comprehensive intervention that uses procurement to achieve specific socio-economic objectives is imperative in ensuring that there is motivation for the introduction of SPP.

Clear conceptualisation of the intervention is important to clearly conceptualise and design the intervention's intent and objectives. The design process should be informed by theory and logic on the impact and objectives the intervention seeks to achieve.

Legislation and regulatory environment are important in guiding the implementation of SPP. The relevant instruments need to be clear on key aspects of the intervention and ensure uniform interpretation across all stakeholders.

## 10. Implementation

Clear delineation of roles amongst key stakeholders is required to implement SPP and institutionally anchor the intervention. All relevant stakeholders should be appropriately included and incentivised to participate.

Capacity and human resources are salient factors in the successful implementation of SPP. Capacity relates not only to the skills and resources required to implement SPP but also refers to time and personnel dedicated and committed to driving SPP within the institution.

Monitoring and evaluation system should be developed as part of the intervention formulation to outline how performance will be tracked and how implementation and impact will be measured. The study strongly highlights the importance of adequate systems for monitoring and evaluation

along with a customised public procurement data system to inform a longitudinal assessment of procurement spending.

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## Appendix A

**Table A1.** List of interviewed stakeholders.

Organisation	Division/Representation
Department of Trade and Industry	Black Economic Empowerment Commission
Department of Trade and Industry	National Empowerment Fund
Department of Trade and Industry	BBBEE Policy Unit
Centre for Economic Development and Transformation	Civil society
National Treasury	Office of the Chief Procurement Officer
The Banking Association	Banking Sector
Department of Trade and Industry	Small Enterprise Development Agency (SEDA)
The Association of Black Securities and Investment Professionals (ABSIP)	Securities and Investment

**Table A2.** Enterprise thresholds (annual turnover).

Enterprise	Codes of Good Practice 2007	Codes of Good Practice 2013	BBBEE Compliance Required
Exempted Micro Enterprises	R5 million	R10 million	No compliance
Qualifying Small Enterprises	R5–R35 million	R10–50 million	Relaxed compliance
Large entities	R35 million and above	R50 million and above	Full compliance

**Table A3.** 80/20 points split.

BBBEE Status Level of Contributor	2011 Regulations Preference Points	2017 Regulations Preference Points
1	20	20
2	18	18
3	16	14
4	12	12
5	8	8
6	6	6
7	4	4
8	2	2
Non-compliant contributor	0	0

Table A4. 90/10 points split.

B-BBEE Status Level of Contributor	2011 Regulations Preference Points	2017 Regulations Preference Points
1	10	10
2	9	9
3	8	6
4	5	5
5	4	4
6	3	3
7	2	2
8	1	1
Non-compliant contributor	0	0

Table A5. Regulation categories 2017.

Categories	Sub-Categories
(a) B-BBEE status level of contributor	
(b) Enterprise type (Exempted Micro Enterprise (EME) and/or Qualifying Small Enterprise (QSE))	
(c) Designated groups which are at least 51% owned by	(i) black people
	(ii) black people who are youth
	(iii) black people who are women
	(iv) black people with disabilities
	(v) black people who are military veterans
	(vi) black people that formed a cooperative (primary, secondary or tertiary cooperative)
	(vii) black people living in rural areas or underdeveloped area or townships
	(viii) EME or QSE

Table A6. BBBEE bonus points.

Element	Bonus points Description	Points
Skills Development	Number of black people absorbed by the measured and industry entity at the end of the learnerships programme.	5
Enterprise and Supplier Development	BBBEE procurement spend from designated group suppliers that are at least 51% black owned.	2
	Bonus point for graduation of one or more enterprise development beneficiaries to graduate to the supplier development level.	1
	Bonus point for creating one or more jobs directly as a result of supplier development and enterprise development initiatives by the measured entity.	1

## BBBEE Elements

- (1) Ownership: is influenced by the voting rights blacks have in a company and their degree of economic interest [65].



- (2) Management control: accounts for the extent to which voting rights on the board is held by black members, the control of the executive board, and what percentage of senior management is held by blacks.
- (3) Employment equity: measures initiatives intended to achieve equity in the workplace in line with the Employment Equity Act which is targeted at “(a) promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination and (b) implementing affirmative action measures to address the disadvantages in employment experiences by designated groups in order to ensure their equitable representation in all occupational categories and levels in the workforce” [48]. The Employment Equity Act provides a framework for implementing affirmative action and is directly linked to BBBEE’s objective of effecting socioeconomic transformation. Employment equity is included in the of the BBBEE scorecard for measuring compliance of prescribed employment equity criteria for the employment of black people in senior, middle, and junior management positions are met with points being awarded or lost based on levels of compliance [24]. The main difference between employment equity and BBBEE is in the objectives and beneficiaries. Whereas BBBEE applies to the whole business on a much broader basis, employment equity is narrower and only applies within the context of an employment relationship. Furthermore, the designated groups in the employment equity mean “black people, women and people with disabilities” [48]. This beneficiary base includes all South African citizens that are disabled, whereas the BBBEE target group is limited to black persons and excludes white persons.
- (4) Skills development: this element seeks to implement initiatives designed to promote the development of core competencies of black employees.
- (5) Preferential procurement: promotes BBBEE by allocating preference to enterprises with higher BBBEE contributions. It measures the extent to which enterprises buy goods and services from BBBEE-compliant suppliers. While the term broad-based black economic empowerment referred to “the economic empowerment of all black people including women, workers, youth and people with disabilities . . . ”, it is important to note that beyond ownership and management control to a certain extent, there are no specific targets for black women and other specified target groups set out in the BBBEE Codes [66].
- (6) Enterprise development: focuses on the extent to which small, black-owned firms receive support and are helped to develop.
- (7) Residual factor: was meant to enable and accelerate broad based factors to be taken into account and considered at the discretion of specific sectors or enterprise. The 2005 Codes encouraged the sectors to consider initiatives including (a) infrastructural support to suppliers and other enterprises in the same area of community, (b) labour intensive production and construction methods, (c) beneficiation, (d) investment and support to enterprises operating in rural communities, and (e) investment in social wage of employees [21].

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